

Case No. 02-11518 (MFW)

Teleglobe Communications Corporation, et al  
Vinyard V Cooke, Esquire

February 9, 2005

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1	A Nope	1 mc?
2	Q Approximately?	2 MR SCHIMMEL Please read Mr Cooke's
3	A No	3 prior answer
4	Q Do you recall when he asked?	4 (The reporter read back the last answer )
5	A I don't. other than it was obviously after the	5 BY MR SCHIMMEL
6	bankruptcy filing	6 Q My question is tell me all the things you did
7	Q Do you know if it's 2002, 2003, 2004?	7 to find out the answer to that question in 2002 before
8	A It was prior to 2004 I don't know if it was	8 the hard drives were sold or people took them.
9	2003 or 2002	9 MR COCHRAN Objection. That question is
10	Q Do you know if any data for Marc Bouchard has	10 unclear
11	been restored?	11 A I personally didn't investigate that issue
12	A I do not, no	12 Q Tell me all the things that the debtors did to
13	Q And do you know if any data of Michael Boychuk	13 investigate that issue
14	has been restored?	14 A I don't know if the debtors did
15	A I do not know about Michael	15 Q To your knowledge, did the debtors do anything
16	Q In the sentence before that on Exhibit 6 your	16 to investigate that issue?
17	counsel wrote "In addition, I have advised that for	17 A I don't know if they did or not
18	the following six individuals mailbox data was imaged	18 Q Is your answer complete?
19	in the summer of 2004: Brunette, Mongrain, Morgan,	19 A Yes
20	Bustamante, Cooke, Sciaciatano."	20 Q Was there anything in 2002 that would have
21	Do you see that?	21 prevented the debtors from imaging the hard drives of
22	A Yes, I do	22 the 28 individuals on Exhibit 5?
23	Q Was that mailbox data from their hard drive or	23 A On Exhibit 5? I mean, What's the relevant
24	from the server?	24 date?
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1	A I don't believe there's a difference between	1 MR SCHIMMEL Could you repeat my question?
2	those.	2 (The reporter read back the last
3	Q Well, why do you believe there's no difference?	3 question )
4	A I believe that my e-mail is on the server.	4 MR COCHRAN Object to form
5	It's on my computer It's on the server I believe	5 THE WITNESS would just restate I don't
6	there are the same	6 know who Randy P. is the witness
7	Q Do people have the option to move e-mails to	7 BY MR SCHIMMEL:
8	their server?	8 Q I'm sorry. Who are you looking?
9	I'm sorry. Do people have the option to	9 A Exhibit 5, Exhibit 5, that in 2002 Paolo Guidi
10	move e-mail to their hard drive?	10 was gone and I believe Mark VanDoorn was gone
11	A I don't know how you would do that, quite	11 Q Other than those three individuals, was there
12	candidly I think they might have, but technically I	12 anything preventing the debtors from imaging the hard
13	don't even know if there was storage capacity on the	13 drives of the 25 remaining individuals on Exhibit 5?
14	computers I'm now speaking with just talking about	14 A I don't know
15	my computer knowledge. I don't know if we had	15 Q Are you aware of anything that would have
16	separate hard drive abilities in our computers or if	16 prevented it?
17	it was all on server only information	17 MR COCHRAN Object to the form.
18	Q And tell me all the things you did to find out	18 A Prevented it was what? I mean, I don't even
19	the response to that information. Tell me all of the	19 know if it's technically possible, but I don't know
20	things you did to find out the response to that	20 one way or the other
21	question in 2002 before the hard drives were sold.	21 Q Was there anything preventing the debtors in
22	MR COCHRAN: My objection is the question	22 2002 from imaging the servers before they were sold?
23	is not clear.	23 MR COCHRAN Object to form
24	A I'm sorry Could you rephrase the question for	24 A Okay. When you say "imaging the servers," you

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1 mean other than the backups that we did throughout  
 2 that time?

3 Q. Yes. That's correct.

4 A I don't know.

5 Q. Is your answer complete?

6 A. Yes

7 Q. So I'm not sure you have given me an answer to  
 8 the question I asked previously.

9 The letter from your counsel says in  
 10 paragraph 11 "I have advised that for the following  
 11 six individuals mailbox data was imaged in the summer  
 12 of 2004." And my question is: Was it mailbox data on  
 13 the server or mailbox data on their hard drive that  
 14 was imaged, to your knowledge?

15 MR COCHRAN: Objection. Asked and  
 16 answered

17 MR SCHIMMEL: It hasn't been answered

18 A I answered that I believe those are one and the  
 19 same.

20 Q. The question is: Do you know which one was  
 21 imaged?

22 MR COCHRAN: Objection.

23 A I do not know. Assuming there's a difference,  
 24 I do not know which one was imaged.

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1 Do you have those documents?

2 A I do

3 Q. Can you describe to me, Mr. Cooke, what those  
 4 notices are?

5 A These are notices that were filed in the  
 6 Bankruptcy Court

7 Q. Regarding the sale of assets of the debtors,  
 8 correct?

9 A Yes

10 Q. And the description of the assets to be sold  
 11 is, if I'm not mistaken, on the first page, if you  
 12 will look at Exhibit 9, the description is the assets  
 13 consist of computer equipment listed in columns C and  
 14 D of the charts attached hereto as Exhibit A.

15 Do you see that?

16 A That is correct

17 Q. So why don't we take a look at the chart  
 18 attached as Exhibit A and specifically the second page  
 19 of the chart?

20 Do you see the chart has several columns?

21 Column A is the name of the person whose computer is  
 22 going to be sold, column B states employment term,  
 23 column C and D indicate whether it's a monitor and/or  
 24 PC that's going to be sold, correct?

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1 Q. Who would know?

2 A David Wolfe would have done that

3 MR SCHIMMEL: Why don't we take a short  
 4 break?

5 MR COCHRAN: Sure.

6 (A brief recess was taken.)

7 MR SCHIMMEL: Please mark this.

8 (Cooke Deposition Exhibit No 9 was marked  
 9 for identification.)

10 MR SCHIMMEL: Mark this one also

11 (Cooke Deposition Exhibit No 10 was  
 12 marked for identification.)

13 BY MR SCHIMMEL:

14 Q. Mr. Cooke, I have just shown you what has been  
 15 marked as Exhibits 9 and 10. Exhibit 9 is a notice of  
 16 proposed sale of assets by debtors and debtors in  
 17 possession pursuant to miscellaneous asset sale  
 18 procedures.

19 A Yes

20 Q. And it's dated August 16, 2002.

21 Exhibit 10 is a notice of proposed sale of  
 22 assets by debtors and debtors in possession pursuant  
 23 to miscellaneous asset sale procedures that's dated  
 24 August 19, 2002.

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1 A. Yes.

2 Q. Item 81 or line 81 is the line of John  
 3 Brunette.

4 Do you see that?

5 A. Yes, I do

6 Q. And this notice of proposed sale appears to  
 7 indicate that Mr. Brunette's computer and monitor was  
 8 going to be sold.

9 Do you see this?

10 A. Yes, I do

11 Q. And it appears to indicate that it's a laptop  
 12 that's going to be sold, correct?

13 A. Yes

14 Q. Was it, in fact, sold?

15 A. No.

16 Q. Why not?

17 A. Well, there are actually two reasons. If you  
 18 will look at Exhibit 10 and you look for John  
 19 Brunette, he's no longer on the list. And the reason  
 20 why is we took everyone who was highly compensated at  
 21 Teleglobe, for example, my name is not on the list,  
 22 and anyone who exceeded a certain threshold they were  
 23 viewed as classic insiders and we just felt it was not  
 24 worth the hassle of selling equipment to them. They

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1 could go out and buy their own. So that's why there's  
 2 a difference between the two.  
 3 Then specifically at the time when they  
 4 left, this is a preapproval but some people opted in  
 5 and bought it and some people did not. John didn't  
 6 have the right to, but others have not bought theirs  
 7 either.  
 8 Q. So let's take a look then at Exhibit 10, which  
 9 I take it would be the exhibit reflecting the  
 10 computers that were actually sold, right?  
 11 MR COCHRAN: I object to form.  
 12 A. No, not necessarily.  
 13 Q. So let's take a look at Exhibit 10 and maybe  
 14 you will explain it to me.  
 15 Exhibit 10 has also on the first page a  
 16 description of the assets to be sold and the  
 17 description is the assets consist of computer  
 18 equipment listed in columns C and D of the chart  
 19 attached hereto as Exhibit A, correct?  
 20 A. Yes.  
 21 Q. If you will look at the chart attached hereto  
 22 as Exhibit A, for instance, the second page of the  
 23 chart, you also have the name of the person whose  
 24 computer is going to be sold?

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1 hasn't yet had the opportunity to buy it, but if he  
 2 does he would pay the full \$125.  
 3 So some of the times accepted their  
 4 opportunity to buy the equipment and some did not.  
 5 Q. I understand some of those computers were  
 6 sold, correct?  
 7 A. Yes.  
 8 Q. I'm sorry. Was the computer of Bruce Miller  
 9 sold on line 99?  
 10 A. No, it was not.  
 11 Q. Because he's still at Teleglobe?  
 12 A. Yes. That's correct.  
 13 Q. And I take it the computer of Kathy Morgan has  
 14 not been sold either?  
 15 A. That's correct.  
 16 Q. And Rebecca S. Iacciatano, her computer still  
 17 has not been sold?  
 18 A. Correct.  
 19 Q. The same thing with respect to Daniel Snyder?  
 20 A. Yes.  
 21 Q. I take it this chart indicates an authorization  
 22 to sell the computers of those individuals to them?  
 23 A. Yes. It was my opinion that they would be  
 24 buying their own computers.

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1 A. Yes.  
 2 Q. And then that's under column A, right?  
 3 A. Yes.  
 4 Q. Under column B you have employment terms?  
 5 A. Yes.  
 6 Q. Under column C and D you have an indication of  
 7 whether it's the monitor and/or the computer that's  
 8 going to be sold?  
 9 A. Or both.  
 10 Q. Or both. So, for instance, line 80 talks about  
 11 Kieren Bustamante, correct?  
 12 A. Yes, it does.  
 13 Q. And it indicates that his monitor and computer  
 14 was about to be sold, correct?  
 15 MR COCHRAN: I object to form.  
 16 A. No, that's not correct. This was a -- you can  
 17 ask me a question.  
 18 Q. Please explain to me what the line referring to  
 19 Kieren Bustamante indicates.  
 20 A. What we did was, because we were in bankruptcy,  
 21 we did not have the right to dispose of assets  
 22 without, especially to insiders, without Bankruptcy  
 23 Court approval. So this list reflects preauthorized  
 24 sales. And, for example, Kieren is still here so he

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1 Q. Before that notice of proposed sale was filed  
 2 with the Court, tell me whether any steps were taken  
 3 to confirm that the data on those computers was  
 4 preserved on a backup tape or the server.  
 5 A. I'm not aware of the steps taken through the steps  
 6 that would be outlined in the disclosures stating the  
 7 default standards for backing up the electronic  
 8 documents, other than I'm not aware of any other  
 9 steps.  
 10 Q. And the steps if you're talking about refer  
 11 to the preservation of backup tapes?  
 12 A. Yes. Well, in the very weekly, monthly  
 13 backups, yes.  
 14 Q. Before selling any of the servers did the  
 15 debtors advise the Bankruptcy Court that they proposed  
 16 to sell servers that had discoverable information on  
 17 them?  
 18 MR COCHRAN: I object to form.  
 19 A. They disclosed to the Bankruptcy Court that  
 20 they were intending to sell servers. I would have to  
 21 look at the motion to see exactly what it said.  
 22 Q. So unless the notice of proposed sale  
 23 specifically indicates that the debtors intended to  
 24 sell servers that contained discoverable information,

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1 no notice was given to the Bankruptcy Court?	1 Q. Who else would know other than you?
2 MR COCHRAN: I object to the form.	2 A. I think I've talked about this before, but it
3 A. Can you --	3 would be the IT people that were in charge of those
4 Q. I will rephrase the question.	4 servers at the time when they were integrated
5 A. Yes. Thank you.	5 Q. And who are no longer at the debtors?
6 Q. I want to know whether the Bankruptcy Court was	6 A. And I don't know if Dave Wolfe was there at
7 told by the debtors before the sale of servers took	7 that time or not. I don't know.
8 place that those servers contained discoverable	8 Q. And you have no knowledge one way or the other?
9 information.	9 A. No knowledge one way or the other.
10 MR COCHRAN: I object to the form.	10 Q. Did you do anything to allow you to prove that
11 Q. And I take it your answer is the way for me to	11 the debtors investigated whether the servers and the
12 find that out is to look at the notice of sale?	12 personal computers contained discoverable information
13 MR COCHRAN: I object to form.	13 before they were sold?
14 A. That's one way.	14 MR COCHRAN: I object to form.
15 Q. What other way?	15 THE WITNESS: Okay. Could you read that
16 A. I can't think of anything else sitting here	16 back to me?
17 today.	17 (The reporter read back the last
18 Q. And when the personal computers and hard drives	18 question.)
19 of individuals were sold by the debtors, was the	19 THE WITNESS: I did nothing to prove
20 Bankruptcy Court advised that the debtors proposed to	20 BY MR SCHIMMEL:
21 sell materials that contained discoverable	21 Q. Did the debtors do anything?
22 Information?	22 A. I don't know if they did or not.
23 MR COCHRAN: I object to the form.	23 Q. As you sit here today, are you aware of any
24 A. I don't know if they contained discoverable	24 steps that the debtors took to prove this?
<hr/>	
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1 information or not, okay, in that my understanding was	1 MR. COCHRAN: I object to form.
2 all the information that was on the servers was pulled	2 A. Other than my prior testimony, I'm not sure
3 off. So, once again, you would have to talk to the	3 And I guess I'm having a hard time. Prove? Maybe you
4 person who was -- in other words, the presumption is	4 should rephrase that question so I'm more conversant
5 there was discoverable information on the servers at	5 with what you're really asking.
6 the time when they were sold? I don't know if there	6 Q. Are you aware of any steps that the debtors
7 were or not, if there was or not.	7 took to be able to demonstrate at some point in time
8 Q. You don't know as you sit here today whether at	8 to any court that they investigated whether the
9 the time the servers were sold they contained any	9 electronic equipment that was sold contained
10 discoverable information?	10 discoverable information?
11 A. I do not know as we sit here today if they	11 MR. COCHRAN: I object to form.
12 contained discoverable information.	12 A. Again, "they"? I'm not -- can you maybe break
13 Q. What steps did you take to find that out before	13 that up or rephrase it for me? You're talking about
14 they were sold?	14 "they" Teleglobe, anyone at Teleglobe?
15 MR. COCHRAN: I object to form.	15 Q. The debtors. I'm trying to find out --
16 A. I personally did not take any steps.	16 A. I'm not trying to be difficult. I'm just
17 Q. What steps did the debtors take?	17 honestly trying to be precise with you.
18 A. I don't know.	18 Q. I understand. I'll try to clarify it.
19 Q. What steps did the debtors take to find out	19 Tell me all the steps that the debtors
20 that information before the servers were sold?	20 took to satisfy their legal obligation to investigate
21 A. I do not know.	21 whether what they sold contained discoverable
22 Q. To your knowledge, did the debtors take any	22 information.
23 steps to find out that information?	23 MR. COCHRAN: I object to form.
24 A. I don't know if they did or not.	24 A. I'm not aware if there's a legal obligation.

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1 I'm not aware of any steps that were taken	1 BY MR. SCHIMMEL:
2 Q. Is your answer complete?	2 Q. So there were employees of the U.S. debtors who
3 A. Yes	3 were based in Canada and whose server data would be
4 Q. Is there any list or log of the employees whose	4 stored on backup tapes located in Canada?
5 data was stored in Canada, server data was stored in	5 A. I don't know.
6 Canada as opposed to the United States?	6 Q. Are you aware of any?
7 A. I'm sorry?	7 A. Maybe Serc...?
8 THE WITNESS: Read that question back	8 Q. Other than Fortin, can you think of any person
9 again. At any time?	9 who was an employee or officer of the U.S. debtor
10 (The reporter read back the last	10 whose server data would be stored in Canada?
11 question.)	11 A. I'm sorry. At this point, I think of anyone?
12 BY MR. SCHIMMEL:	12 THE WITNESS: I'm sorry. What was the
13 Q. The period of time would be February 2000 to	13 question?
14 May 2002.	14 (The reporter read back the last
15 A. You mean during that time -- I'm sorry. Once	15 question.)
16 again, are you saying is there right now a list?	16 THE WITNESS: Possibly Pichette
17 Q. That would tell us who are the employees whose	17 BY MR. SCHIMMEL:
18 data was stored in Canada and who are the employees	18 Q. Anybody else?
19 whose data was stored in the United States. I'm	19 A. Possibly Boychuk.
20 talking about the server data.	20 Q. Was he an employee of the U.S. debtors?
21 A. We do have a list for the e-mail accounts for	21 A. I believe he was an officer of the U.S.
22 the individuals that were on the Reston server. There	22 debtors.
23 obviously was a list for Canadian employees or I guess	23 Q. Other than Boychuk?
24 you could take people, you know, do it the reverse way	24 A. Those are the ones that I can think of.
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1 because they wouldn't be on both. They would be on	1 Q. So really all of the employees and officers of
2 one or the other	2 the U.S. debtors, apart possibly from those three,
3 But my understanding is that information	3 would have their server data stored in the U.S.?
4 for the e-mail system in Canada is not accessible or	4 A. I don't know if it's true or not. I don't
5 is otherwise not available or lost	5 know if that's true. But my understanding, my
6 Q. Just to make sure I understand, the employees	6 understanding is that if they were based in Reston, you
7 and officers of the U.S. debtors had data saved	7 were on the Reston server.
8 exclusively only in the United States?	8 Q. And the only three people you can think of who
9 A. My understanding is if you were based in	9 may have been based in Montreal and had their data on
10 Reston, you were on the Reston server. If you were	10 the servers in Montreal are Fortin, Pichette and
11 based in Montreal, you were on the Montreal server.	11 Boychuk?
12 And there were a handful of people that went back and	12 A. Those are the three that I can think of
13 forth. I don't know if it would just be a case-by-	13 today, but there might be others.
14 case issue	14 Q. And with respect to all of the others who were
15 Q. And could you be based in Montreal and be an	15 based in Reston you have a catalog?
16 employee or an officer of the debtors, the U.S.	16 A. Yes. For those that are based on the Reston
17 debtors?	17 servers we have a catalog.
18 A. I'm sorry. Will you ask that again?	18 Q. And that's for the e-mail servers?
19 THE WITNESS: Can you read that back to	19 A. That is for the e-mail servers.
20 me?	20 Q. How about the file servers, do you have a
21 (The reporter read back the last	21 catalog for that?
22 question.)	22 A. No, we do not have a file catalog.
23 THE WITNESS: Yes	23 Q. Do you know if at any point in time there was a
24	24 catalog for the file servers located in Reston?

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1 A Yes, there was.	1 Q. With respect to the tapes that the debtors have
2 Q. And it was lost?	2 restored, first of all, how many tapes have the
3 A It was lost or it's otherwise unavailable.	3 debtors restored, to your knowledge?
4 Q. Why is it unavailable?	4 A I have no idea. I mean ever?
5 A It could be that -- I know that we have	5 Q. No. Those that were restored as of January
6 different systems than we used to have and so the	6 1st, 2004, how many of them are there?
7 question is do the systems that we have now still	7 A I'm sorry. Say that again. What was the date?
8 speak to the systems where that information was	8 Q. We have been advised by your counsel that the
9 stored?	9 debtors have restored some backup tapes as of January
10 Q. Do you know if that is the issue as opposed to	10 1, 2004 and I believe you and I discussed them some
11 the catalog was lost?	11 time ago.
12 A I don't know which one of those it is	12 A Okay I'm sorry. Say that again. The
13 Q. Who would have the answer to that question?	13 debtors?
14 A. David Wolfe.	14 Q. Have restored some backup tapes as of January
15 Q. I would like you to take a look at Exhibit 4,	15 1, 2004.
16 which is the debtors' disclosure pursuant to default	16 A Right. That's for the six individuals.
17 standard for discovery of electronic documents.	17 Q. Right. How many tapes are we talking about?
18 A. Yes. I have that	18 A. I don't know. It could be -- sometimes it's
19 Q. Under 5b.	19 all on one tape and sometimes it could be across six
20 A Yes.	20 tapes. It just depends. They are multiplexed
21 Q. The debtors wrote "The backup tapes are old and	21 Q. So you don't know if it's one or six?
22 have been mounted several times."	22 A It could be, it could be ten. It just depends
23 A. Yes	23 on what day, what server.
24 Q. What does "mounted several times" mean?	24 Q. Is it less than twenty?
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1 A. These are tapes like the size of a tape measure	1 MR. COCHRAN: I object to form.
2 and what you do is you put them in what's called a	2 A. Yes. My common understanding is it's usually
3 robot and they are turned and the data is read and	3 somewhere between one and six
4 then put back up on the server.	4 Q. Do you know if those tapes contain data for
5 So when they're mounted, they're	5 individuals other than the six we discussed? Let me
6 physically put into this robot	6 read to you exactly who they are: Brunette, Mongrain,
7 Q. Why does the fact that they were mounted	7 Morgan, Bustamante, Cooke and Sciacciatano.
8 several times make it more difficult to restore the	8 A. And for those people your question is?
9 tapes?	9 MR. SCHIMMEL: Can you read my question?
10 A. I don't know	10 (The reporter read back the last
11 Q. But it's your understanding that that's the	11 question.)
12 case?	12 BY MR. SCHIMMEL:
13 A. Yes.	13 Q. Let me rephrase the question and clarify it.
14 Q. Under 3a do you see the sentence that says,	14 Do you know if the tapes that have been
15 "Depending upon the identity and location of the	15 restored contain data of individuals other than those
16 employee, or the server utilized by the employee, the	16 six?
17 existing backup tapes for the Debtors' e-mail systems	17 A. Yes
18 are in storage at the Debtors' facilities in Reston,	18 Q. And that data has been restored as well?
19 Virginia, or the Recall facility in Montreal?"	19 A. I don't think so. I don't really know that
20 A. Yes, I do.	20 process, but my understanding is you restore the tape
21 Q. The Recall facility in Montreal, is that the	21 and then you pull out the individuals that you want
22 facility of the company called Recall that you	22 and put it up on the server, but technically I don't
23 described earlier?	23 know how that's really done.
24 A. Yes. And it's actually in Laval	24 Q. That was made possible because you had the

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1 catalog?	1 Q. So what did you do to make sure that the
2 A That was made possible because we had the	2 collection of paper documents was complete?
3 catalog, yes	3 MR. COCHRAN: I object to form.
4 Q. Do you know if with respect to those six	4 A It's just as I described earlier, which was it
5 individuals there are other tapes that contain their	5 was actually facilitate boxed up everything that was
6 data?	6 left in the Teleglob facilities and shipped them to
7 A I'm sorry. Say that again.	7 Chantilly and then they were parsed through and sorted
8 THE WITNESS: I'm sorry. Could you read	8 and then brought back to our offices.
9 that back?	9 So specifically, I gave no directions on
10 (The reporter read back the last	10 that. That just happened as a matter of course in us
11 question.)	11 vacating our office building.
12 MR. COCHRAN: I object to the form.	12 Q. Who are the people in facilities who were
13 THE WITNESS: Yes	13 involved in that process?
14 BY MR. SCHIMMEL:	14 A Tens if not more people. I mean, it was
15 Q. Are there other tapes that contain the data of	15 everyone that was -- it was engaged in that exercise.
16 those individuals that have not yet been restored?	16 The departments had to box up their materials and put
17 A Yes	17 them out. It occupied a good number of people, if not
18 Q. I would like to talk to you for a minute about	18 everyone, at Teleglob for more than a week to put all
19 the efforts to collect the paper documents.	19 of that material together.
20 A Sure	20 Q. Was that done at some point in the spring of
21 MR. COCHRAN: Is this in addition to what	21 2002?
22 you've already covered or are you going to go back to	22 A No. It would have been done when we moved out
23 re-cover what you already covered?	23 of the office building.
24 MR. SCHIMMEL: Yes. We have covered very	24 MR. COCHRAN: Off the record for just a
1 little of the collection of paper documents.	moment.
2 MR. COCHRAN: I disagree. How much longer	(Discussion off the record.)
3 do you think you will have?	(A brief recess was taken.)
4 MR. SCHIMMEL: At least until 5:00	4 BY MR. SCHIMMEL:
5 o'clock.	5 Q. Before the facilities people went to collect
6 BY MR. SCHIMMEL:	6 the paper documents of employees or officers of the
7 Q. Mr. Cooke, who were the individuals who were	7 debtors, did you personally give any instruction to
8 specifically in charge of collecting the paper	8 anyone as to how they were supposed to do their job?
9 documents of the debtors' employees both in Canada and	9 A I didn't speak to anybody in facilities, no.
10 the U.S.?	10 Q. Did you speak to anyone else about how the
11 MR. COCHRAN: I object to form.	11 people in facilities were supposed to do their job?
12 A I'm not sure the debtors had any employees in	12 A Other than the legal meetings during May of 2002 in
13 Canada. They might have. I don't know enough about	13 talking to the legal team as to whether the legal team went
14 that.	14 out and spoke to people in facilities -- we did have
15 To the extent that there were documents in	15 people talking to the legal team. I don't know what, if
16 the U.S., I think I described that earlier today in	16 anything, they said.
17 terms of moving from one building to the other and	17 Q. Do you know if the people on the legal team
18 then moving them all back to our present offices	18 instructed people in facilities to meet with each
19 Q. What you have described before is that you gave	19 individual employee or officer to see what documents
20 an oral instruction to people who worked with you in	20 they had and how it was stored and to make sure the
21 the legal department to collect the paper documents of	21 collection was complete?
22 a certain number of individuals.	22 A I don't believe it occurred, no.
23 A I don't think that was my testimony.	23 Q. Did you ever instruct anybody to make sure that
24 MR. COCHRAN: I object to the form.	24 that would occur?

50 (Pages 194 to 197)

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1 A. I did not	1 Q. When you just said, "I don't know who went
2 Q. Why not?	2 there," what did you refer to by "there"?
3 MR COCHRAN: I object to form.	3 A. In other words, to the Chantilly office
4 A. I don't know I just did not	4 building. I know a team of lawyers went over.
5 Q. Was an index made at the time the facilities	5 Q. To pull documents?
6 people gathered all the documents of everything that	6 A. But the only one I knew who went over is Cihon,
7 was collected?	7 who I know is gone
8 A. I don't know if they did or not	8 Q. So that I understand, some documents were
9 Q. Have you ever seen one?	9 pulled from the boxes stored in Chantilly, correct?
10 A. No.	10 A. Some documents were pulled, yes
11 Q. And I take it from your testimony that sometime	11 Q. And they were given to Cerberus as part of the
12 after that people involved in the sale of the business	12 sale, correct?
13 to Cerberus went through those boxes to pull some	13 A. And they were ultimately transferred to
14 documents such as operational agreements?	14 Cerberus.
15 A. Yes We had to divide core/non-core under the	15 Q. And you don't know whether a copy was made?
16 terms of the sale/purchase agreement and a group of	16 A. I do not know whether a copy was made..
17 people went out to Chantilly and divided up core, what	17 Q. And you don't know whether an index was
18 I call core Cerberus-owned documents versus estate	18 prepared?
19 documents	19 A. That is correct.
20 Q. Would it be fair to say that the core documents	20 Q. With respect to the other documents that
21 are those that were subsequently transferred to	21 remained at Chantilly, was an index prepared?
22 Cerberus?	22 MR. COCHRAN: Objection to form.
23 A. I can just tell you the core documents were	23 A. At that time not that I'm aware
24 Cerberus's documents So, in other words, anything	24 Q. I believe you testified earlier that some
Page 199	Page 201
1 that related to assets or services that were being	1 people went through those remaining files at Chantilly
2 sold to Cerberus, all documentation of those went to	2 and took out personal documents, personal folders.
3 Cerberus.	3 A. Right, personal effects, things like that
4 Q. Was a copy preserved before it went to	4 Q. The rest of it was sent to the debtors'
5 Cerberus?	5 offices?
6 A. I don't know what they -- I was not in charge	6 A. That is correct
7 of that process, so I don't know what they did.	7 Q. Was an index made of all of the personal
8 Q. Who would be the people in charge of that	8 materials that were pulled?
9 process?	9 A. No
10 A. I don't specifically know who was in charge of	10 Q. What was done with those?
11 dividing it.	11 A. I don't know I was not part of that process
12 Q. I believe you mentioned earlier Kathy Morgan	12 I just know that personal items were pulled
13 and John Brunette.	13 Q. And you have no idea what happened to them?
14 A. Yes Obviously, Kathy and John were at the	14 A. I know they are not presently in our offices.
15 ultimate control for that, for the merger and	15 Q. Do you know where they are?
16 acquisition	16 A. No
17 Q. Would they know whether an index of the	17 Q. Do you know if they were discarded?
18 documents shipped to Cerberus was prepared?	18 A. I do not know.
19 A. They might know	19 Q. Who are the individuals who were in charge of
20 Q. Who else might know?	20 pulling the personal files, I mean what you described
21 A. Well, all of the attorneys -- well, I don't	21 as the personal files?
22 know who went over there, so I would just be	22 A. Right It would have been the same group of
23 speculating as to whether any of those attorneys are	23 people
24 still with us or not I don't know	24 Q. Working under your supervision?

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<p>1 MR. COCHRAN: I object to the form.</p> <p>2 A No They were not working under my</p> <p>3 supervision</p> <p>4 Q Well, they were people working in the legal</p> <p>5 department, right, the lawyers?</p> <p>6 A Right But I'm only one part of that</p> <p>7 department</p> <p>8 Q Well, under whose supervision were they</p> <p>9 working?</p> <p>10 A I believe they were working under John's and</p> <p>11 Kathy's supervision</p> <p>12 Q You've never seen an index of whatever those</p> <p>13 people pulled?</p> <p>14 A I have never seen an index of what those people</p> <p>15 pulled</p> <p>16 Q And you have never heard that an index had been</p> <p>17 prepared of those, quote/unquote, personal files?</p> <p>18 A I haven't heard one way or the other I'm not</p> <p>19 sure I have ever inquired</p> <p>20 Q And would it be fair to say that after some</p> <p>21 documents were shipped to Cerberus and after some</p> <p>22 additional documents were segregated on the belief</p> <p>23 that they may be personal files, the remaining boxes</p> <p>24 were sent to the office of the debtors?</p>	<p>1 question calls for privilege information?</p> <p>2 THE WITNESS I can see if I can answer</p> <p>3 and if it works</p> <p>4 A But in response to your request for production</p> <p>5 of documents, we have provided those documents and we</p> <p>6 have provided to you a summary or an index of</p> <p>7 responsive documents</p> <p>8 Q Have you reviewed the thousand boxes in</p> <p>9 response to our document request?</p> <p>10 A We have reviewed the thousand boxes.</p> <p>11 Q When have you reviewed the thousand boxes?</p> <p>12 A Over the last month maybe before it started</p> <p>13 soon after -- I don't remember when your request for</p> <p>14 production of documents came in</p> <p>15 Q But it's after our request came in that you</p> <p>16 reviewed the thousand boxes?</p> <p>17 A Yes</p> <p>18 Q And you determined that a subset of those</p> <p>19 thousand boxes were responsive?</p> <p>20 A Yes Based on certain limitations included in</p> <p>21 your request for production of documents, yes</p> <p>22 Q And you prepared an index that was submitted to</p> <p>23 us I believe yesterday night?</p> <p>24 A Yes I don't know if it was submitted</p>
<p>1 MR. COCHRAN: I object to the form</p> <p>2 A I believe that the remaining boxes that were</p> <p>3 not shipped to Cerberus and which do not reflect</p> <p>4 personal deals did come to our offices, yes</p> <p>5 Q Was an index of those documents prepared at</p> <p>6 that time?</p> <p>7 A At that time, no</p> <p>8 Q How many boxes are we talking about, the boxes</p> <p>9 that were shipped to the offices of the debtors?</p> <p>10 MR. COCHRAN: I'm sorry Would you read</p> <p>11 that back?</p> <p>12 (The reporter read back the last</p> <p>13 question.)</p> <p>14 THE WITNESS: I know that there are</p> <p>15 approximately a thousand boxes of documents in our</p> <p>16 offices</p> <p>17 BY MR. SCHIMMEL:</p> <p>18 Q At any point in time has an index been prepared</p> <p>19 of those boxes?</p> <p>20 A Yes Not all, but yes</p> <p>21 Q Why was an index not prepared of all of the</p> <p>22 boxes?</p> <p>23 A (Pause)</p> <p>24 MR. COCHRAN: Are you concerned that the</p>	<p>1 Q When was the index prepared?</p> <p>2 A The index has been in process over the last --</p> <p>3 that same time period. We're doing it over time</p> <p>4 Q When is the last time you saw it?</p> <p>5 A I don't know. I have seen the index. I've</p> <p>6 seen parts of the index.</p> <p>7 Q When?</p> <p>8 A Last week</p> <p>9 Q Is any other index in existence regarding the</p> <p>10 thousand boxes of documents in your offices?</p> <p>11 A No</p> <p>12 Q The only index that exists is the one that was</p> <p>13 provided to us?</p> <p>14 A Let me triple check and say to my knowledge, the</p> <p>15 only list that exists is with you There may be other</p> <p>16 lists, but I am not aware of any</p> <p>17 Q You have never seen any other list?</p> <p>18 A I have not seen any other list</p> <p>19 Q And you're not aware of the existence of any</p> <p>20 other list?</p> <p>21 A I'm not aware of the existence of any other</p> <p>22 list</p> <p>23 Q Do you know when facilities boxed those</p> <p>24 documents the process that they went through to</p>

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1 organize them?  
 2 A. I do not, other than having seen what happened  
 3 to the legal department.  
 4 Q. What happened to the legal department?  
 5 A. In the legal department we went file cabinet by  
 6 file cabinet emptying each one and stacking them up  
 7 and then they came around and they were taken away.  
 8 Q. Were the files of the debtors in Reston  
 9 maintained by individual?  
 10 A. Some were, yes.  
 11 Q. And there were also some central files for each  
 12 department?  
 13 A. I know that legal had a central file.  
 14 Q. What kind of documents would be in the central  
 15 file in legal as opposed to the files of individuals?  
 16 A. We had, for example, a room that had all of our  
 17 service agreements all in one central place. I know,  
 18 for example -- let's see. Are there any others that I  
 19 can think of?  
 20 That's the one that comes to mind. I'm  
 21 not sure I can think of any others like that. We may  
 22 have been the only one that did it that way. I don't  
 23 know.  
 24 Q. Do you have any idea whether people in

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1 Q. Please go ahead.  
 2 A. That's the most that I can remember at that  
 3 time. I mean, there were a lot of things, a lot of  
 4 moving parts at that time.  
 5 Q. But this is what you remember as you sit here  
 6 today?  
 7 A. As I sit here today, that's what I remember.  
 8 Q. And you don't remember any other reasons why  
 9 you didn't instruct people in facilities to collect  
 10 documents in the order in which they were maintained?  
 11 A. I can't think of anything else.  
 12 Q. Do you know if anybody else at the debtors  
 13 instructed facilities to collect documents in the  
 14 order in which they were maintained?  
 15 A. I don't know what other people were doing.  
 16 Q. To your knowledge, did that happen?  
 17 A. To my knowledge, I don't know one way or the  
 18 other.  
 19 Q. Have you ever investigated to see if it had  
 20 happened, if in fact facilities was instructed to  
 21 collect documents in the order in which they were  
 22 maintained?  
 23 A. I'm sorry. What was the question again?  
 24 Q. Let me rephrase it.

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1 facilities boxed documents in the way they were  
 2 maintained in the ordinary course of business with  
 3 respect to the other departments?  
 4 A. I have no idea.  
 5 Q. Did you ever give any instruction to anybody to  
 6 make sure that that would happen?  
 7 MR. COCHRAN: I'm sorry. Would you read  
 8 that back?  
 9 (The reporter read back the last  
 10 question.)  
 11 MR. COCHRAN: That what?  
 12 MR. SCHIMMEL: That facilities would box  
 13 documents in the order in which they were maintained.  
 14 THE WITNESS: No, I did not.  
 15 BY MR. SCHIMMEL:  
 16 Q. Why not?  
 17 MR. COCHRAN: I object to form.  
 18 A. We were in the middle of the bankruptcy and we  
 19 were trying to sell the business and trying to move  
 20 out of our offices at the same time with a shorthanded  
 21 staff and an overworked legal department.  
 22 Q. Is your answer complete?  
 23 A. There's probably more that I could specify, but  
 24 that's --

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1 Have you ever investigated whether anybody  
 2 instructed facilities to collect documents in the  
 3 order in which they were maintained?  
 4 A. I have not investigated, no.  
 5 Q. To your knowledge, has anybody under me  
 6 conducted that investigation?  
 7 A. To my knowledge, no one under me would have  
 8 conducted that investigation.  
 9 Q. To your knowledge, did anybody conduct that  
 10 investigation?  
 11 A. I don't know one way or the other.  
 12 Q. We've received an index of documents maintained  
 13 in Canada that is eight boxes long.  
 14 A. Right.  
 15 Q. Are those documents of the debtors, the U.S.  
 16 debtors?  
 17 A. Probably some.  
 18 Q. Why were they stored in Canada?  
 19 A. There were certain functions that were provided  
 20 in Canada to the U.S. and other entities. For  
 21 example, the finance group was largely based in  
 22 Montreal and collections is another one.  
 23 So, for example, all of the collections,  
 24 receivables, everything else that was handled by the

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<p>1 debtors, the personnel who were handling those matters      2 were based in Montreal. So the debtors files and the      3 Canadian entities files and other Teleglobe entities      4 files are all commingled together.</p> <p>5 MR. SCHIMMEL: Can you read back that      6 answer?</p> <p>7 (The reporter read back the last answer)</p> <p>8 BY MR. SCHIMMEL:</p> <p>9 Q. Do you know when those documents were gathered?</p> <p>10 A. I'm sorry? Which documents?</p> <p>11 Q. Those that are based in Montreal.</p> <p>12 MR. COCHRAN: Objection to form.</p> <p>13 A. You're talking about based in the Iron Mountain      14 facility?</p> <p>15 Q. Well --</p> <p>16 MR. COCHRAN: You're talking about the      17 eight-box index?</p> <p>18 MR. SCHIMMEL: Yes. That's exactly what I      19 am talking about.</p> <p>20 BY MR. SCHIMMEL:</p> <p>21 Q. The documents that are located in Canada, when      22 were they collected and put in boxes?</p> <p>23 A. Over the life-span of Teleglobe's operations.</p> <p>24 Q. So you mean some of those boxes that were sent</p>	<p>1 Q. So people in facilities in Reston went to box      2 some of the documents in Canada?</p> <p>3 A. No. It's Objection to form. Canadian people in the      4 facilities department in Canada would have been      5 responsible for sending them back and forth to      6 Iron Mountain.</p> <p>7 Q. Did people in Reston have any supervisory      8 authority over facilities in Canada?</p> <p>9 A. I believe so.</p> <p>10 Q. Who are the people in Reston who had      11 supervisory authority over facilities in Canada?</p> <p>12 A. I believe that Mr. Bense was ultimately in      13 charge of all retail facilities, i.e., the facilities for      14 both the U.S. and Canada.</p> <p>15 Q. Would Ms. Bense have had authority over the      16 people who boxed the documents in Canada and sent them      17 to Iron Mountain?</p> <p>18 MR. COCHRAN: Objection to form.</p> <p>19 A. I believe so.</p> <p>20 Q. To your knowledge, was any instruction given to      21 the employees who worked in facilities in Canada to      22 box things in the order in which they were maintained?</p> <p>23 A. I believe so.</p> <p>24 Q. Did you after April 24 of 2002 give any</p>
<p>1 to Iron Mountain before April 24, 2002?</p> <p>2 A. Yes.</p> <p>3 Q. And would the index that you provided us      4 indicate that?</p> <p>5 A. It should.</p> <p>6 Q. Have you reviewed that index?</p> <p>7 A. I have seen portions of the index.</p> <p>8 Q. What portions have you seen?</p> <p>9 A. I just saw -- as I went through those indexes.</p> <p>10 I just took a random look to see what was in there.</p> <p>11 Q. So when you took a random look what are the      12 portions of the index that you looked at?</p> <p>13 A. I just remember there would be finance      14 documents, tax documents, sales documents, marketing      15 documents. It just depended on the specific index.</p> <p>16 Q. To your knowledge, what efforts were made to      17 put these documents in the order in which they were      18 maintained?</p> <p>19 A. I have no idea how those documents were      20 originally stored or prepared to be stored by Iron      21 Mountain.</p> <p>22 Q. Who would know that?</p> <p>23 A. Probably somebody in facilities who's      24 responsible for that.</p>	<p>1 instruction to anyone to make sure that that would      2 happen?</p> <p>3 A. I did not.</p> <p>4 Q. To your knowledge, did anyone at the debtors      5 give that instruction?</p> <p>6 A. I don't know.</p> <p>7 Q. Did you personally ever investigate whether      8 that instruction was given?</p> <p>9 MR. COCHRAN: Objection to instruction?</p> <p>10 MR. SCHIMMEL: Objection that we have been      11 talking about for the last few minutes.</p> <p>12 MR. COCHRAN: Which is what?</p> <p>13 MR. SCHIMMEL: That the people in the      14 facilities department in Canada boxed documents in the      15 order in which they were maintained.</p> <p>16 A. I don't know.</p> <p>17 Q. I'm asking you if you investigated.</p> <p>18 A. I did not investigate.</p> <p>19 Q. Do you know if anyone at the debtors ever      20 investigated to make sure that people in facilities in      21 Canada boxed documents in the order in which they were      22 maintained?</p> <p>23 A. I don't know.</p> <p>24 did.</p>
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1 Q. Is your answer complete?	1 all of the documents that are mentioned here have been
2 A. Yes	2 produced?
3 Q. Before the servers were sold, did anyone at the	3 MR. COCHRAN: I think it was responsive
4 debtors advise BCE that the debtors proposed to sell	4 A. I mean contracts, board minutes and
5 equipment that may contain discoverable information?	5 resolutions, budgets? I would have to go back and --
6 MR. COCHRAN: Objection to form	6 I have not seen the index that was provided to you.
7 A. Again, all of those were sold pursuant to	7 But I would presume that -- I can't presume one way or
8 bankruptcy notices. I presume that all of the lawyers	8 the other. I would be guessing as to whether there is
9 and other people listed on the service would have	9 information on each of these that would relate back to
10 gotten the notice. I'm not aware one way or the other	10 the indexes that were provided to you.
11 as to whether anybody communicated with BCE about that	11 Q. To your knowledge, are any of those documents
12 outside of those notice provisions.	12 not responsive to the defendants' document request?
13 Q. Is your answer complete?	13 MR. COCHRAN: I object to form
14 A. Yes	14 A. I'm not sure. Which documents?
15 Q. To your knowledge, did anyone at the debtors	15 Q. Those that are listed under 26(a)(1)(B). Are
16 tell Mr. Fortin that the debtors proposed to sell	16 there any documents listed here that in your mind are
17 equipment that may contain discoverable information?	17 not responsive or called for by the defendants'
18 MR. COCHRAN: Objection to the form.	18 document request?
19 A. I don't know one way or the other.	19 MR. COCHRAN: I object to form.
20 Q. To your knowledge, did anyone at the debtors	20 A. I'm not sure how to answer that. These are
21 tell Mr. Pichette that the debtors proposed to sell	21 listed as relevant documents. I would presume -- I
22 equipment that may contain discoverable information?	22 don't know how to answer the question
23 MR. COCHRAN: Same objection.	23 I can say that we will, if you look at
24 A. I don't know	24 those indexes, everything that we have within the time
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1 Q. I would like you to take a look at Exhibit 8	1 period that you have requested, other than privileged
2 and specifically page 8.	2 documents, is going to be made available to you,
3 MR. COCHRAN: Specifically what?	3 everything we have in Reston
4 MR. SCHIMMEL: Page 8 in Exhibit 8.	4 Q. So let me rephrase my question.
5 BY MR. SCHIMMEL:	5 Are all the documents covered in Exhibit 8
6 Q. The description under Rule 26(a)(1)(B).	6 under Rule 26(a)(1)(B) reflected in the index?
7 A. Yes.	7 MR. COCHRAN: I object to the form.
8 Q. And I will read that to you: "Categories of	8 A. I don't know. I don't know. I haven't seen
9 documents in Debtors' possession, custody or control	9 the index. So it should be, but I don't know
10 that Debtors may use to support their claims include	10 Q. Is your answer complete?
11 but are not limited to: contracts; board minutes and	11 A. Yes.
12 resolutions; budgets, estimates, proposals and other	12 Q. Have the debtors employed any outside vendors
13 presentations; financial statements; press releases;	13 or consultants with respect to the preservation,
14 public filings; analysts' reports; correspondence; and	14 collection, maintenance or production of the debtors'
15 other related documents."	15 documents?
16 Do you see that?	16 MR. COCHRAN: Are you including both
17 A. Yes, I do.	17 electronic and paper?
18 Q. To your knowledge, have all those documents	18 MR. SCHIMMEL: Everything.
19 been produced to the defendants in this case?	19 A. Yes
20 A. I think we've responded to your discovery	20 Q. Who are the vendors that you've retained?
21 requests and provided the indexes. I'm not sure you	21 A. I believe Diane Barrasso is the only one who
22 have actually seen any of the documents.	22 has been retained, but there may be others. That's
23 Q. This is not my question.	23 the only one that I know of
24 My question is whether to your knowledge	24 And that's Barrasso Consulting

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1 Q. Where is she located? 2 A. Physically I think their offices are in New 3 Jersey. 4 Q. Is there a contract with Barrasso Consulting? 5 A. There must be. 6 Q. Have you ever seen it? 7 A. Well, it would had to have been filed with -- I 8 believe it got filed with the Bankruptcy Court. I 9 have seen a lot of contracts. Does that one stand 10 out? I can't remember. I believe it probably is 11 attached to a bankruptcy motion. 12 Q. What is the scope of her duties and 13 responsibilities? 14 A. I would have to look at that. I don't know if 15 she wrote an engagement letter. And it could be that 16 she was actually retained by Richards, Layton. I 17 don't remember how it was phrased. 18 MR. COCHRAN: I think beyond what we have 19 disclosed in the electronic discovery disclosure and 20 perhaps any bankruptcy motion, although I don't know 21 whether there's been one, beyond those things it's 22 work product and we will direct him not to answer. 23 Q. When was Ms. Barrasso of Barrasso Consulting 24 retained, to your knowledge?	1 Q. When did you send her a couple of tapes? 2 A. Sometime in the second half of 2004. 3 Q. Which tapes were those? 4 A. They were just 5 MR. COCHRAN: I think that's probably far 6 enough. 7 THE WITNESS: Okay. 8 MR. COCHRAN: To the extent that we have 9 disclosed information regarding Ms. Barrasso, that's 10 available to you. Let me reiterate, it's not required to disclose 11 anything further with regard to consultants that we 12 have engaged for purposes of litigation. 13 MR. SCHIMMEL: Well, we're entitled to 14 know what backup tapes have been restored. 15 MR. COCHRAN: You can ask that question, 16 but you don't need to ask what Ms. Barrasso is doing. 17 BY MR. SCHIMMEL: 18 Q. Other than the backup tapes that are described 19 in the letter of Mr. Cochran which is Exhibit 6, were 20 any other backup tapes restored? 21 A. Let me set back. I'm talking about in 22 paragraph 11. 23 Q. The last sentence of paragraph 11. 24 MR. COCHRAN: You're asking whether any
1 A. Sometime in 2004. 2 Q. Do you remember more or less when? 3 A. Sometime after the case was filed. 4 Q. Is Ms. Barrasso responsible for restoring 5 backup tapes? 6 A. At any time or presently? 7 Q. At any time. 8 MR. COCHRAN: Is she responsible for -- 9 MR. SCHIMMEL: Let me clarify the 10 question. 11 BY MR. SCHIMMEL: 12 Q. Is Ms. Barrasso involved in any way in the 13 restoration of backup tapes? 14 MR. COCHRAN: I'm sorry. Your voice 15 trailed off. 16 MR. SCHIMMEL: Mr. Cochran is right. I 17 will clarify the question. 18 BY MR. SCHIMMEL: 19 Q. Is Barrasso Consulting involved in the 20 restoration of backup tapes? 21 MR. COCHRAN: I object to the form. 22 A. I believe we sent her a couple of tapes. I 23 don't know what she did with them, so I don't know if 24 she -- I don't know what she did with them.	1 backup tapes other than those relating to those 2 individuals in paragraph 11. 3 Q. Other than the backup tapes described in the 4 last sentence in paragraph 11, I would like to know if 5 backup tapes were restored. 6 A. Yes. Other backup tapes restored. 7 MR. COCHRAN: This has all been asked and 8 answered earlier. 9 A. The only one I specifically know is the Patrick 10 Pichette ones that were requested by John, but I know 11 numerous, all through 2002 and 2003 we were restoring 12 people's e-mails for personal or other reasons. 13 Q. Operational and what other reasons? Tell me 14 all of the reasons that backup tapes were restored in 15 2002 and 2003. 16 A. Somebody on our end wanted to figure out what 17 was the state of our correspondence at the time when 18 they left. 19 Q. So you restored backup tapes in the ordinary 20 course of business? 21 A. In the ordinary course. 22 Q. In 2002 and 2003? 23 A. Yes. 24 MR. COCHRAN: I believe we have already

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1 been over this ground  
 2 Q. Other than Barrasso Consulting, have the  
 3 debtors retained any outside vendors or consultants  
 4 with respect to the preservation, maintenance,  
 5 collection or production or review of documents?  
 6 MR. COCHRAN: If you want to limit it to  
 7 your first question and not your second, I'll let him  
 8 answer it.  
 9 MR. SCHIMMEL: I don't understand.  
 10 MR. COCHRAN: You asked two questions,  
 11 vendors or consultants.  
 12 MR. SCHIMMEL: I would like to know --  
 13 it's a yes or no question -- whether the debtors have  
 14 retained any other vendors or consultants with respect  
 15 to the preservation, maintenance, collection or review  
 16 process of documents.  
 17 A. Right. And to my knowledge, we have an  
 18 engagement letter or a contract with Recall for  
 19 maintaining and storing and we have, we or Richards,  
 20 Layton has an agreement with Barrasso Consulting.  
 21 Those are the two that I'm aware of.  
 22 Q. I would like you to take a look at your  
 23 affidavit.  
 24 A. Sure.

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1 When you wrote this paragraph 5 you only  
 2 had in mind equipment revolving around backup tapes?  
 3 A. I think I was just trying to say that much of  
 4 our IT equipment has been sold and we've lost  
 5 effectively every one of our 150 people who used to  
 6 deal with IT items  
 7 Q. And what I am trying to find out is whether  
 8 there were other electronic storage devices such as  
 9 optical disks, CD's, things of that nature.  
 10 A. There very well may have been.  
 11 Q. Did you ever instruct anybody to preserve those  
 12 pieces of equipment?  
 13 A. I did not  
 14 Q. Did you ever instruct anybody to find out  
 15 whether they existed?  
 16 A. I did not  
 17 Q. To your knowledge, did the debtors ever  
 18 instruct anyone to figure out whether those pieces of  
 19 equipment existed?  
 20 MR. COCHRAN: I object to form  
 21 A. I don't know whether they did or not.  
 22 Q. Do you know whether the debtors instructed any  
 23 person to find out whether those devices existed?  
 24 A. I don't know if they did or not

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1 Q. In paragraph 5 in the first sentence you state  
 2 "Teleglobe has sold practically all of its IT  
 3 equipment, including servers, tape restore machines,  
 4 and other computer equipment formerly used to back up  
 5 and store e-mail and other electronic data."  
 6 Do you see that?  
 7 A. Yes, I do.  
 8 Q. What computer equipment other than backup tapes  
 9 did Teleglobe formerly use to back up and store e-mail  
 10 and other electronic data?  
 11 A. Specifically, I can't tell you.  
 12 Q. In general?  
 13 A. We had the robots and the robots interplay with  
 14 another piece of equipment that gets on the server.  
 15 Q. All of those pieces of equipment have to do  
 16 with backup tapes?  
 17 A. Yes. I'm sorry. Maybe I misunderstood you.  
 18 Q. So the question is: Other than backup tapes,  
 19 were there electronic storage devices that the debtors  
 20 used?  
 21 A. Such as?  
 22 Q. CD's.  
 23 A. I don't know.  
 24 Q. Did you ever -- let me rephrase the question.

1 Q. Is there any way for us today to figure out  
 2 whether those storage devices existed?  
 3 MR. COCHRAN: What storage devices?  
 4 MR. SCHIMMEL: Any electronic storage  
 5 devices other than backup tapes, such as, for  
 6 instance, optical disks, CD's, things of that nature  
 7 BY MR. SCHIMMEL:  
 8 Q. How can we know whether as of April 24, 2002  
 9 there were any such devices?  
 10 MR. COCHRAN: Objection to form.  
 11 A. I don't know. We would have to -- the only,  
 12 obviously the only IT person still left is David  
 13 Wolfe.  
 14 Q. You never gave any instruction to any person to  
 15 ascertain whether those equipments existed, meet with  
 16 employees to find out whether they used them, gather  
 17 them?  
 18 A. I must candidly say I don't know what the  
 19 equipment is that you're talking about. So the only  
 20 thing that I was aware of was that we had electronic  
 21 backup tapes for our computers and in terms of the  
 22 electronic world of Teleglobe, those are the items  
 23 that -- I mean, nobody came forward and told me we had  
 24 other storage capabilities. I never asked them.

57 (Pages 222 to 225)

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1    whether they did. I did ask them to maintain the 2    electronic tapes	1    A    It was typically office personnel 2    executives, senior management
3    Q. Is your answer complete?	3    Q. What efforts were made, if any, to collect 4    those devices after April 24, 2002?
4    A    Yes	5    A    Those were BlackBerry's. They were not 6    Teleglobe equipment. It was not software supported 7    by Teleglobe, if that's the sense
8    Q. Did you ever make any effort to figure out 9    whether employees or officers had computer disks?	8    Q. Was any effort made to determine whether those 9    devices contained any information related to 10   Teleglobe?
11   A    Like CD drives? What do you mean "computer 12   disks"?	11   A    They were basically being operating on their 13   servers, so unless they went through our system we 14   haven't subpoenaed anyone for their BlackBerrys or 15   their Palm.
16   Q. Yes. Any floppy disks, any disks that could be 17   used to store electronic information.	16   Q. Did the debtors conduct any investigation to 17   ascertain whether those devices such as BlackBerrys 18   and Palm Pilots contained information related to 19   Teleglobe?
20   A    I did -- I'm sorry.	20   THE WITNESS: Sorry. Could you repeat 21   that question?
21   THE WITNESS: Can I get the question 22   repeated?	21   (The reporter read back the last 22   question.)
23   (The reporter read back the last 24   question.)	23   THE WITNESS: I do not and I don't know 24   whether the debtors did not.
25   BY MR. SCHIMMEL:	
26   Q. Did you instruct anyone to conduct that 27   investigation?	
28   A    I did not.	
29   Q. To your knowledge, did the debtors conduct that 30   investigation?	
31   A    I don't know if they did or not	
Page 227	Page 229
1    Q. Obviously, with respect to all those questions 2    I'm talking about after April 24, 2002.	1    BY MR. SCHIMMEL:
3    A    Okay	2    Q. I understand from what you said before that 3    facilities collected the paper documents of the legal 4    department at some point in the summer of 2002?
5    Q. That doesn't change your answer?	5    A    Yes
6    A    As far as I know, I know we do have some 7    formatted disks and some floppy disks and things in 8    those boxes and I think you're going to see in the 9    indexes there should be notations about where they 10   are, which box they're in	6    Q. And those documents at that time were in place 7    boxes and shipped to Chantilly?
11   Q. But other than those disks that were retrieved 12   and placed in boxes, you don't know if individuals 13   when they left took disks with them?	8    A    Well, we had one individual -- the legal 9    department was to me very unique because some of 10   them were active files, some of them were dead 11   files. So for live files, they were sent to the new 12   office building, but the dead files were put in a separate 13   stack and were sent to Chantilly
14   A    No, I do not	14   Q. The documents produced to the defendants in 15   response to the defendants' document request included 16   both documents from the live files and from the dead 17   files?
18   Q. What steps did you take, if any, to ask 19   individual employees and officers to preserve such 20   disks and provide them to the debtors?	18   A    If not privileged, yes.
21   A    Other than my discussions with my legal group 22   and the e-mail discussed with Chris Chon, I'm not 23   aware of any other steps	19   Q. Can you explain to me the process that was 20   followed to search for responsive documents in the 21   live files?
24   Q. Do you know if people, employees or officers of 25   the debtors had hand-held devices such as BlackBerrys 26   or Palm Pilots?	22   A    Well, the documents that dead files are now 23   effectively in the same office. In other words, the 24   dead files took a different route but have
27   A    There were a few.	
28   Q. Who had them?	

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1 ultimately come back to our offices. And all of the  
 2 boxes that were in our facility we have had people go  
 3 through and if a box has information in it that is  
 4 within the time frame of your request, that entire box  
 5 has been put into the center of the room and been  
 6 indexed and you have been provided the index.

7 Q. I would like to go back to the backup tapes for  
 8 a second.

9 You testified that some of the backup  
 10 tapes of the debtors have been restored?

11 A. Yes

12 Q. I would like to know whether those backup tapes  
 13 have been searched after the backup tapes were  
 14 restored?

15 A. Okay. The tapes that were backed up --

16 MR. COCHRAN: I object to form.

17 A. -- that have been restored to the extent that  
 18 they are still on our servers, and we're cataloging  
 19 which of those there are, I think will be searched.

20 Q. Has any one of them been searched so far?

21 A. Searched for what?

22 Q. For documents.

23 A. You mean pursuant to the electronic protocols  
 24 that we've exchanged information on?

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1 question.

2 BY MR. SCHIMMEL:

3 Q. Has a search been conducted following the  
 4 restoration?

5 MR. COCHRAN: The reason I need you to  
 6 clarify is because if you are asking for searches  
 7 outside of the normal discovery process, I'll need to  
 8 interpose a work product objection.

9 MR. SCHIMMEL: I'm not asking for the  
 10 result of the search and I'm not asking for any work  
 11 product. I'm asking for a yes or no answer. Are you  
 12 instructing him not to answer?

13 MR. COCHRAN: If you are asking whether  
 14 the tapes were searched to respond to your discovery,  
 15 I'll let him answer that.

16 If you are asking whether tapes were  
 17 searched by the debtors for purposes of litigation,  
 18 I'm not going to let him answer that.

19 If you are asking whether the tapes were  
 20 searched in the ordinary course of business, I'll let  
 21 him answer that.

22 So I need you to clarify your question.

23 MR. SCHIMMEL: Okay. Let me ask then two  
 24 questions.

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1 Q. No. Apart from that.

2 MR. COCHRAN: You want to know outside of  
 3 the normal channel of discovery whether they were been  
 4 searched? Is that what you are asking?

5 MR. SCHIMMEL: No. I am trying to find  
 6 out whether the tapes that have been restored after --  
 7 let me clarify my question.

8 MR. COCHRAN: Please.

9 BY MR. SCHIMMEL:

10 Q. In paragraph 11 of Mr. Cochran's letter which  
 11 is Exhibit 6 he mentions that some backup tapes have  
 12 been restored, correct?

13 A. Yes

14 Q. I want to know, and it's just a yes or no  
 15 question, whether following the restoration there has  
 16 been a search for documents?

17 MR. COCHRAN: For purposes of  
 18 clarification, are you asking whether there was a  
 19 search outside of the process outlined in the  
 20 Delaware District Court's e-discovery default  
 21 standards which is the normal process that we have  
 22 been implementing in this case or are you asking  
 23 something else?

24 MR. SCHIMMEL: I'm asking a very simple

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1 BY MR. SCHIMMEL:

2 Q. Have the tapes been searched following the  
 3 communications between the plaintiffs and the  
 4 defendants under the default standards?

5 MR. COCHRAN: If you are confused --  
 6 understand that question to be asking whether they  
 7 have been searched in the ordinary course of discovery  
 8 and that I think is a permissible question.

9 A. I don't believe so. I honestly have not -- I  
 10 don't think anything has been done since we started  
 11 talking about the standards to be reviewed.

12 That might be an overbroad answer. I  
 13 believe we have been waiting for clarification on what  
 14 is to be searched before we searched anything.

15 Q. Do you know if the tapes of Mr. Pichette that  
 16 were searched in 2002 -- let me rephrase that.

17 Do you know if the data restored  
 18 concerning Mr. Pichette in 2002 was searched following  
 19 restoration?

20 A. I don't know if Mr. Pichette's information that  
 21 was restored, and that's the one that I do know was,  
 22 if it's still on the servers -- at the time I know  
 23 that John did look for some of his information. I  
 24 have no idea what he did with it, if anything.

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<p>1 Q. Do you know if it was searched using search      2 terms?</p> <p>3 A. No. No, not search terms as I understand them      4 between the two of you</p> <p>5 Q. Well, what --</p> <p>6 A. I mean, I don't know how John, what he did      7 What he did with the Pichette information I have no      8 idea.</p> <p>9 Q. And you don't know how the search was      10 conducted?</p> <p>11 A. No, I don't</p> <p>12 Q. If we wanted to find out what backup tapes have      13 been overwritten between the fall of 2002 and early      14 2003 or in the last few months of 2002, how could we      15 go about obtaining that information?</p> <p>16 MR COCHRAN: I object to form</p> <p>17 Q. You've testified earlier that some tapes were      18 overwritten in the latter part of 2002. If we want to      19 know what tapes were overwritten, how would we obtain      20 that information?</p> <p>21 MR COCHRAN: I object to form</p> <p>22 A. It would be very difficult to do because we      23 don't have a catalog of -- those tapes that were      24 overwritten were all Montreal tapes. And, once again,</p>	<p>1 software systems</p> <p>2 A. Yes.</p> <p>3 Q. When you talk about existing hardware and      4 software systems are those that the debtors owned      5 prior to April 2002 or other existing hardware and      6 software systems?</p> <p>7 A. I think I can help on this because what      8 they're really talking about is just like we talked      9 about these slave machines or whatever you call these      10 machines that are used to mount the tapes in, for      11 example. In the pre-bankruptcy days we had machines that      12 would hold 30, 40 tapes. Those were sold. And so we      13 had to go out in the market when we started to realize      14 that we had to back up additional tapes. We got a      15 smaller robot which I think holds three or five tapes      16 at a time. And so the tape was originally stored on      17 one machine and then going to be restored by another      18 machine, I think that. I understand that has been      19 the cause of some tape problems.</p> <p>20 Q. What would be the problem exactly?</p> <p>21 A. I think it's comparable to if I record a tape      22 on a VCR and then go to a friend's house and I try to      23 play the same tape on the VCR, I might get grainy      24 images because it's not on the same machine. I think</p>
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<p>1 because we don't have a catalog, it's going to be very      2 difficult for us to match up what tapes should be      3 there for that day and what tapes are there for that      4 day</p> <p>5 And I don't know, once again, I don't know      6 if the tapes are ordered sequentially, but I don't      7 believe they are, so it's not like that you would find      8 a gap.</p> <p>9 MR. SCHIMMEL: Can we take a five minute      10 break?</p> <p>11 THE WITNESS: Sure</p> <p>12 (A brief recess was taken.)</p> <p>13 BY MR. SCHIMMEL:</p> <p>14 Q. Mr. Cooke, I would like to point your attention      15 to item 5b.</p> <p>16 A. I'm sorry. On which exhibit?</p> <p>17 Q. In Exhibit 4.</p> <p>18 A. Yes</p> <p>19 Q. 5b talks about the problems reasonably      20 anticipated in connection with restoring the e-mails      21 and electronic documents and 5b says, "The backup      22 tapes are old and have been mounted several times.      23 This has caused excessive wear on the tapes resulting      24 in some unrestorable data using existing hardware and</p>	<p>1 it's effectively that</p> <p>2 Q. And so the second set of machines were machines      3 bought after the bankruptcy filing?</p> <p>4 A. Yes. We had to -- in other words, we      5 sold the big machine and didn't even think we could      6 move them over to the new building. They were just      7 simply too large and didn't fit that actually fits      8 within our server room.</p> <p>9 Q. Do you remember when the tape restore machines      10 were sold?</p> <p>11 A. No</p> <p>12 Q. Was it sometime in 2002?</p> <p>13 A. Or early 2003</p> <p>14 Q. And that was after your meeting with people in      15 Montreal?</p> <p>16 A. Yes.</p> <p>17 Q. Did you give any instruction to any person to      18 make sure that whatever equipment had to be --</p> <p>19 MR. COCHRAN: Sorry. I can't hear      20 your voice</p> <p>21 Q. Did you give any instruction to anyone not to      22 sell equipment if that could cause further damage to      23 the backup tapes?</p> <p>24 MR. COCHRAN: Direct to the form</p>

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1 A. I would just say I had no idea whether it would  
 2 cause damage or not and I did not discuss anything  
 3 relating to the retention of machinery.

4 Q. So at the time the tape restore machines were  
 5 sold, you didn't ask any questions of anyone as to  
 6 whether that would possibly further damage the backup  
 7 tapes in their possession, custody and control?

8 MR. COCHRAN: I object to the form.

9 A. I did not have discussions about the  
 10 implications of selling equipment that effectively we  
 11 couldn't use.

12 Q. And the effect of selling that equipment I take  
 13 it is that this caused further problems to the tapes?

14 MR. COCHRAN: I object to form.

15 A. In some instances we have had difficulty  
 16 restoring data.

17 Q. To your knowledge, did the debtors give any  
 18 instruction to any person to avoid selling equipment  
 19 when the sale would further damage the backup tapes in  
 20 the debtors' possession, custody or control?

21 MR. COCHRAN: I object to form.

22 A. I'm not aware of any instruction personally.

23 Q. Wasn't that important?

24 MR. COCHRAN: I object to form.

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1 question.)

2 THE WITNESS: I guess there's a  
 3 presumption in there that just because they cannot be  
 4 restored using our existing equipment that the data is  
 5 lost, and I'm not sure I agree with you  
 6 So I guess there's a presumption there  
 7 that --

8 BY MR. SCHIMMEL:

9 Q. There's really not meant to be a presumption in  
 10 my question. Paragraph 5b says, "The backup tapes are  
 11 old and have been mounted several times."

12 My only question is whether at any point  
 13 in time you asked that tapes be copied so that  
 14 whatever problems caused by the fact that they were  
 15 mounted several times would not exist?

16 THE WITNESS: Okay. Could you read that  
 17 question back to me again?

18 I'm sorry. I think there are a couple of  
 19 questions in there, if's questions or presumptions  
 20 inside the question, so I'm just trying to accurately  
 21 respond

22 (The reporter read back the last  
 23 question.)

24 THE WITNESS: Okay. If we break that

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1 A. Candidly, what you would do is you would just  
 2 go to the next day, one day or the other, forward or  
 3 back. So other certain tapes that we can't restore,  
 4 that's restored on our current systems. That doesn't  
 5 mean it's lost.

6 For example, this idea of other vendors  
 7 being able to what I have been told is crack the  
 8 tapes, I'm not sure that's implicated. But in our  
 9 ability to restore our own tapes internally using our  
 10 own hardware and software, I would not be able to  
 11 quantify how many tapes are unreadable. I don't think  
 12 it's ...

13 Q. You cannot quantify how many tapes are  
 14 unreadable as a result of selling the equipment, the  
 15 tape restore machines?

16 MR. COCHRAN: I object to form.

17 A. Correct.

18 Q. Did you at any point in time give any  
 19 instruction to any person to copy backup tapes to make  
 20 sure that remounting them would not cause a loss of  
 21 data?

22 THE WITNESS: Could you read that back to  
 23 me?

24 (The reporter read back the last

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1 question up, I did not have any conversations about  
 2 making copies. And then I take -- I think the rest of  
 3 it has a presumption that I'm not sure I agree with.  
 4 But the answer to your question is I did  
 5 not have any discussions about people m...  
 6 BY MR. SCHIMMEL:

7 Q. At any point in time?

8 MR. COCHRAN: I'm sorry?

9 Q. At any point in time?

10 A. Well, now I get into a privilege issue, so  
 11 maybe we better walk outside. We will be right down.  
 12 (The witness and Mr. Cochran left the  
 13 deposition room for a brief period of time.)

14 THE WITNESS: If you want to read back the  
 15 question?

16 (The reporter read back the pending  
 17 question.)

18 THE WITNESS: I have had discussions with  
 19 people about making copies of tapes.

20 BY MR. SCHIMMEL:

21 Q. With who?

22 A. Third-party vendors.

23 Q. Which ones?

24 MR. COCHRAN: That's privileged. That's

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<p>1 work product.</p> <p>2 Q. When did you have those discussions?</p> <p>3 A. I had a set sometime in early 2003</p> <p>4 MR. COCHRAN: Then I'm mistaken</p> <p>5 A. It was just technically just seeing</p> <p>6 effectively --</p> <p>7 MR. COCHRAN: Then I'm mistaken if it's</p> <p>8 2003</p> <p>9 A. Somebody came in --</p> <p>10 MR. COCHRAN: Let me consult with you</p> <p>11 again.</p> <p>12 THE WITNESS: Okay</p> <p>13 (The witness and Mr. Cochran left the</p> <p>14 deposition room for a brief period of time )</p> <p>15 MR. COCHRAN: I'll tell you what. I'll</p> <p>16 let him answer that question on the condition of</p> <p>17 non-waiver. That is, if you agree that it's not a</p> <p>18 waiver of work product, I will let him answer.</p> <p>19 I'm unclear, frankly, based on what I</p> <p>20 understand as to whether it's work product or not.</p> <p>21 MR. SCHIMMEL: Okay. That's fine.</p> <p>22 BY MR. SCHIMMEL:</p> <p>23 Q. So can you --</p> <p>24 MR. COCHRAN: If you're in agreement it's</p>	<p>1 BY MR. SCHIMMEL</p> <p>2 Q. Rather than utilizing your own people?</p> <p>3 A. Our own people, our own internal resources</p> <p>4 Q. To do what?</p> <p>5 A. To restore the tapes</p> <p>6 Q. And what are the third-party vendors that you</p> <p>7 consulted?</p> <p>8 A. There was a consultant who was based in Washington</p> <p>9 I can't remember his name, but he came out and made</p> <p>10 a presentation</p> <p>11 Q. When was that?</p> <p>12 A. Sometime in '03</p> <p>13 Q. Do you remember when?</p> <p>14 A. No</p> <p>15 Q. Was any contract ever entered into with that</p> <p>16 consultant?</p> <p>17 A. No</p> <p>18 Q. To whom did he make the presentation?</p> <p>19 A. To John and John Brunette and I</p> <p>20 Q. Why did he make it to John Brunette and you?</p> <p>21 MR. COCHRAN: Where?</p> <p>22 Q. Why did he make it to John Brunette and you?</p> <p>23 A. Because John Brunette requested it and I was</p> <p>24 assisting him in the process.</p>
<p>1 not a waiver?</p> <p>2 MR. SCHIMMEL: I agree that we don't</p> <p>3 intend to cause you to waive attorney-client</p> <p>4 privilege.</p> <p>5 And we would not expect that any of the</p> <p>6 answers that Mr. Cossette gave at his deposition</p> <p>7 were --</p> <p>8 MR. COCHRAN: I didn't hear 90 percent of</p> <p>9 what you said</p> <p>10 MR. SCHIMMEL: I said I agree that we do</p> <p>11 not intend to take the position that Mr. Cooke's</p> <p>12 answer would waive work product privilege</p> <p>13 MR. COCHRAN: That's fine</p> <p>14 MR. SCHIMMEL: In the same fashion that we</p> <p>15 don't expect that any of the answers of Mr. Cossette</p> <p>16 at his deposition would have been a waiver</p> <p>17 MR. COCHRAN: That I would have to go back</p> <p>18 and review the transcript for. The first part is</p> <p>19 fine. The second part we will reserve our rights</p> <p>20 That means you may now answer</p> <p>21 THE WITNESS: We had a third-party vendor</p> <p>22 come in just to discuss whether it would be simpler or</p> <p>23 easier to make copies and manipulate them that way</p> <p>24 rather than using our own people</p>	<p>1 Q. Did Mr. Brunette ask you to be present?</p> <p>2 A. I don't remember. I wouldn't have been present</p> <p>3 if he didn't want me there.</p> <p>4 Q. Do you remember what specific tapes the</p> <p>5 consultant was looking at?</p> <p>6 A. He didn't look at the tapes. He was just</p> <p>7 speaking generally about the process, how it works</p> <p>8 Q. And what were the tapes that Mr. Brunette was</p> <p>9 considering restoring?</p> <p>10 A. The backup tapes.</p> <p>11 Q. Which ones?</p> <p>12 A. It would have been all or all</p> <p>13 Q. Was any action taken as a result of that</p> <p>14 meeting?</p> <p>15 A. Only that I didn't pursue it</p> <p>16 Q. Why?</p> <p>17 A. Price</p> <p>18 MR. COCHRAN: Mr. Schimmel, it's now 25</p> <p>19 minutes of 6:00 and I've been at it since 10:00</p> <p>20 this morning. How much longer do you expect that you</p> <p>21 will have?</p> <p>22 MR. SCHIMMEL: Well, I will adjourn the</p> <p>23 deposition now.</p> <p>24 Very clearly there were very many</p>

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1 questions to which you didn't have the answer today,  
2 so we will have to adjourn the deposition.

3 MR. COCHRAN: I'm pleased to continue this  
4 evening to allow you to finish

5 MR. SCHIMMEL: I am pleased to continue,  
6 but the problem is with respect to numerous questions  
7 that were covered by the notice the answer was "I  
8 don't know"

9 MR. COCHRAN: So you're finished for this  
10 evening?

11 MR. SCHIMMEL: We're adjourned for this  
12 evening

13 MR. COCHRAN: We will reserve our rights  
14 then. Thank you

15 Let's go.

16 THE WITNESS: Thank you, gentlemen.

17 (Discussion off the record.)

18 BY MR. SCHIMMEL:

19 Q. Mr. Cooke, what did you do to prepare for this  
20 deposition?

21 A. I met with my counsel

22 Q. When did you meet with your counsel?

23 A. Yesterday

24 Q. Do you mean Mr. Cochran?

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1 (Deposition adjourned at 5:40 p.m.)  
2 I N D E X  
3 DEPONENT: VINYARD V COOKE, ESQUIRE PAGE  
4 Examination by Mr. Schimmel 3  
5 E X H I B I T S  
6 COOKE DEPOSITION EXHIBITS MARKED  
7 1 Notice of Rule 30(b)(6) Deposition of  
Debtors 2  
9 2 Affidavit of Vinyard V. Cooke 9  
10 3 Complaint 23  
11 4 Debtors' Disclosures Pursuant To Default  
Standard For Discovery Of Electronic  
Documents 53  
13 5 Two-page document captioned "Selected  
directors, officers and employees of the  
Debtors, or TI, who may have generated  
discoverable e data" 61  
16 6 Four-page letter to Daniel Schimmel, Esquire  
from C. Malcolm Cochran, IV dated  
January 31, 2005 61  
18 7 Five page letter to George J. Wade from  
Brock E. Czeschin dated November 9, 2004 115  
19 8 Debtors' Initial Disclosures Pursuant To  
Fed. R. Bankr. P. 7026 And Fed. R. Civ. P.  
26(a) 116  
21 9 Notice Of Proposed Sale Of Assets By Debtors  
And Debtors In Possession Pursuant To  
Miscellaneous Asset Sale Procedures dated  
August 16, 2002 175  
24

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1 A. Yes

2 Q. Anybody else?

3 A. David Wolfe was there.

4 Q. Was that to prepare for your deposition?

5 A. Yes, it was.

6 Q. Were you shown any documents in that  
7 preparation?

8 A. I saw the list of topics, the original notice.

9 Q. Did you see anything else?

10 A. I don't think so

11 Q. Was Mr. Wolfe shown any documents?

12 A. He also saw the notice.

13 Q. Did he see anything else?

14 A. I don't think so.

15 Q. Did you do anything else to prepare for the  
16 deposition?

17 A. No I did speak with Mr. Wolfe during that  
18 prep.

19 Q. Yesterday?

20 A. Yesterday.

21 Q. Did you do anything else to prepare for this  
22 deposition?

23 A. Not that I remember today.

24 MR. SCHIMMEL: Thank you very much

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1 COOKE DEPOSITION EXHIBITS MARKED  
2 10 Notice Of Proposed Sale Of Assets By  
Debtors And Debtors In Possession  
3 Pursuant To Miscellaneous Asset Sale  
Procedures dated August 19, 2002  
4  
5 ERRATA SHEET/DEPONENT'S SIGNATURE PAGE 250  
6 CERTIFICATE OF REPORTER PAGE 251  
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2  
3       REPLACE THIS PAGE  
4       WITH THE ERRATA SHEET  
5       AFTER IT HAS BEEN  
6       COMPLETED AND SIGNED  
7       BY THE DEPONENT  
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1 State of Delaware )  
2                  )  
3 New Castle County )

## 4       CERTIFICATE OF REPORTER

5  
6       I, Kurt A. Fetzer, Registered Diplomate  
7       Reporter and Notary Public, do hereby certify that  
8       there came before me on the 9th day of February, 2005,  
9       the deponent herein, VINYARD V. COOKE, ESQUIRE, who  
10      was duly sworn by me and thereafter examined by  
11      counsel for the respective parties; that the questions  
12      asked of said deponent and the answers given were  
13      taken down by me in Stenotype notes and thereafter  
14      transcribed by use of computer-aided transcription and  
15      computer printer under my direction

16      I further certify that the foregoing is a true  
17      and correct transcript of the testimony given at said  
18      examination of said witness

19      I further certify that I am not counsel,  
20      attorney, or relative of either party, or otherwise  
21      interested in the event of this suit

22  
23  
24      Kurt A. Fetzer, RDR, CRR  
25      Certification No 100-RPR  
26      (Expires January 31, 2008)

DATED:

20

21

22

23

24

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